Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. ____

In the

Supreme Court of the United States

October Term 2001

Joseph R. Caterina, Frances H. Caterina, Emmett Caterina and Clara Caterina,

Petitioners,

v.

Unified Judicial System of The Commonwealth of Pennsylvania,& Related Parties; Lackawanna Co. Redevelopment Authority; PA General State Authority; Blakely Borough et al,

Respondents.

On Petition For Writ of Certiorari To The United States Court of Appeals For the Third Circuit

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PETITION FOR A WRIT OF CERTIORARI

Joseph R. Caterina,
Frances H. Caterina,
Emmett Caterina,
Clara Caterina; ProSe

c/o 202 Kenyon Drive
Peckville, Pa. 18452
(570) 489-8741
(570) 489-6322

March 6, 2001

#1

54 pp

QUESTIONS PRESENTED FOR REVIEW

1) Does Federal Rules of Civil Proceedure, Rule 4 and Local Rule 4.1, obstruct the rights of the Petitioners as secured under the Constitution of the United States by abrogating them prematurely contrary to Miranda v Arizona ? 1/n (see 4/n p.1)

2) Did the Court suspend the rights of the Petitioners as secured under the Constitution of the United States,(Trial by Jury and Not to be Restrained without probable cause), by failing to Suspend the Rule, thereby intentionally obstructing the assertion of their Rights a violation of their Civil Rights and Rights to Due Process ? (Civil Rights 18 USC Chp 13, Secs ~~SS~~ 241,242 - Deprivation of rights under color of law)

1/n
"Where rights secured by the Constitution are involved, their can be no rule making or legislation which abrogate them." (emphasis added)
Ernesto A. Miranda v State of Arizona, (348 US 433; 86 Sup Ct Rpt 1602; n 73 p 1608)

LIST OF PARTIES

Condemnees, Petitioners:
Joseph R. Caterina and Frances H Caterina
Emmett Caterina and Clara Caterina, Pro Se
c/o 202 Kenyon Dr., Peckville, PA. 18452
phone (570) 489-8741 home, 489-6322 nights
petitioners represented if granted by:
Atty. _____

Phone ( ) FAX

Condemnors & Related Parties, Respondents

Atty. Harry T. COLEMAN, Esq., Atty. Edwin A. ABRAHAMSEN, Esq.,/ Abrahamsen, Moran & Conaboy, 205-207 N. Washington Ave., 2nd Fl., W.C. Carter Bldg., Scranton, PA. 18503 Phone (570) 348-0200, Represents the following Respondents:
Blakely Borough, 1439 Main St., Peckville, Pa. 18452

Atty. (M. Colleen Foley CANOVAS)., Atty. Thomas J. FOLEY, Jr., Esq.,/Foley, McLane, Nealon, Foley & McDonald, P.C., 600 Linden Plaza, Scranton, PA. 18501-1108, Phone

(570) 342-8194, Represents the following Respondent:
Lackawanna County Redevelopment Authority, 200 Adams Ave., Scranton, PA. 18503

Atty. Elizabeth A. O'REILLY ID# 48519, Atty. Catherina A. FOLEY ID# 63814, Atty. Jose E. MORALES ID# 31890, for Dept. General Services; c/o 603 North Office Building, Harrisburg, Pa. 17125 and Atty. Gregory C. SANTORO, for General State Authority, Phone (717) 787-5599, Represents the following Respondents:
The General State Authority of PA and the Dept. of General Services of PA, c/o 603 North Office Building, Harrisburg, PA. 17-125; Phone (717) 787-5599

Atty. Mike FISHER Attorney General of PA., c/o Atty. Calvin R. KOONS Senior Deputy Attorney General Appellate Litigation Section, 15th Fl., Strawberry Square, Harrisburg, PA. 17120, Phone (717)783 -6709, Represents the following Respondents:
Commonwealth of Pennsylvania, Attorney General Office, 1515 Strawberry Square, Harrisburg, PA. 17108; FAX (717)772 -4526

Atty. Thomas B. HELBIG, Esq., 1000 Bank Towers Bldg., Scranton, PA. 18503, Phone (* 570) 346-7651/ Scanlon, Howley, Scanlon & Doherty, 321 Spruce St., Scranton, PA 18-503, Represents the following Respondent:
Lackawanna County *FAX (570) 340-1542
200 Adams Ave., Scranton, PA., 18503

Unified Judicial System of the Commonwealth of Pennsylvania c/o Supreme Court of PA., Rm. 434 Main Capitol Bldg., Harrisburg, PA 17120, Phone (717) 787-6181, Represents ? the following Respondent:
Unified Judicial System of the Commonwealth of Pennsylvania as per 42 Pa.C.S.A. § 301 Judiciary, Unified Judicial System, address unknown and no listed telephone or FAX.

Judge John Cottone, J. and Judge Walsh,? c/o Lackawanna County Courthouse Prothonotary: Cv No. 60046-1996, Equity; and In Rem No. 1976 Year 1993; Washington Ave., Scranton, PA 18503, Represents the following Respondent:
Lackawanna County Court System, c/o Lackawanna Courthouse, Scranton, PA., 18503 , Phone (570) 963-6752; (570) 963-6765

BASIS FOR JURISDICTION IN THE COURT

On January 16, 2001, Clerk Marcia M. Waldron of the United States Court of Appeals for the Third Circuit attested an Order of that Court affirming judgments of the District Court entered July 19, 1999 and July 29, 1999 in accordance with the opinion of said Court. This Court has Jurisdiction on this Writ of Certiorari pursuant to Supreme Court Rule 10(c) wherein the Third Circuit Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with revelant decisions of this Court. More specifically, this Honorable Court's Jurisdiction is invoked under 28 U.S.C. § 1254 (1). see (A-7) herein

4/n Issue concerns inability of Petitioners to comply with lower court Order because a judicial determination pending in this Court required disposition before proceeding in the District Court wherein FRCP Rule 4 and Local Rule 4.1 suppressed the Constitutional Rights of the Petitioners.

CONSTITUTIONAL PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

FOURTH AMENDMENT: The Right of the People to be Secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

FIFTH AMENDMENT: Nor be deprived of Life, Liberty, or Property without due process of law.

SEVENTH AMENDMENT: In suits at Common Law, where the value in controversy shall exceed Twenty dollars, the Right of Trial by Jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the Rules of Common Law.

NINTH AMENDMENT: The enumeration in the Constitution, of certain rights, shall be not construed to deny or disparage others retained by the people.

TENTH AMENDMENT: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

FOURTEENTH AMENDMENT: . . no State shall . . deprive any person of Life, Liberty, or Property, without due process of law; nor deny . . the equal protection of the laws . .

STATEMENT OF THE CASE

Petitioners herein filed a cause of action in the District Court, M.D.PA timely in pursuit of perfecting their Right to Trial By Jury as was denied them and to Not be Restrained without Probable cause

pursuant to rights and privileges and immunities secured and guaranteed protection to them by the Constitution of the United States and laws thereof. Necessary to proceed was the exhaustion of their Statutory Remedy inorder to perfect their substantive rights and privileges before their case could go forth in the District Court herein appealed. Petitioners herein timely filed with Counsel a Cert Petition with this Court, No. 97-102, Rehearing Denied 12 Jan 1998; that perfected their case to permit their cause of action to go forth in the District Court. The District Court Judge was fully informed and proceeded to impliment FRCP Rule 4 and Local Rule 4.1 despite repeated request to suspend the Rules and protect the Rights of the Petitioners to allow them Due Process in as much as they had an 'Inability to Comply' with his Order as awaiting the disposition final Order of this Court, thus exhausting their Statutory Remedy! The Judge Suspended our Rights instead of the Rule and obstructed the assertion of our perfected rights contrary to Miranda v Arizona, n73 and 28 USC § 2072(b) 2/n wherein the Court of Appeals *

*see (A-35)herein

2/n
"(b) Such rules shall not abridge . . . any substantive right." 28USC § 2072(b)

neglected and failed to disclose these relevant facts of 'Inability to Comply'in their Order/Opinion in furtherance of an abuse of discretion to suppress our rights.

ARGUMENT

The only issue before this Court is the FRCP Rule 4 and Local Rule 4.1, which if reversed will allow the Petitioners herein the opportunity of Due Process and Relief.

The District Court failed to understand that the Petitioners were making every effort to perfect their Right to Trial by Jury under the Seventh Amendment and that the Pendency of the Cert Petition and Rehearing No 97-102 had very great bearing as its' exhaustion was crucial to the perfection of their asserted Rights to the Remedy of 'Right to Trial By Jury' and 'Not to be Restrained without Probable Cause', as the Statutory Remedy; the right to appeal needed to be exhausted; inorder to validate their Right to Trial by Jury, as denied them, unthe VII Amendment of the Constitution of the United States.

The Judge was asked to suspend the Rule and Permit the Remedy; but the Judge and his Law Clerks refused and as a result these consolidated appeals can not go forth because the Judge suspended their Rights instead of the Rule and abrogated and abridged

their substantive rights violative of 28 USC § 2072(b) 2/n and contrary to Miranda v Arizona n73. 1/n *see (A-13)herein

Compliance with Court Order 24 June 1997* would have compromised the Petitioners' Cause of Action prematurely before the Exhaustion of their Statutory Remedy and compelled them to move on the same case in two Courts at the same time violative of Pendente Lite and Lis Pendens as the judicial determination pending the US Sup Ct was necessary inorder to proceed and the Judge intentionally obstructed, abridged and abrogated the substantive rights of the Petitioners knowing they had An Inability to Comply with said Order of the District Court with regard to Local Rule 4.1 and FRCP Rule 4.

CONCLUSION

This Court should vacate the Orders herein being appealed; Order 16, July 1999,** & Order 28 July 1999; 3/n and reverse the US Ct Appeals,3rd Cir Order Opinion/Judgment 7 December 2000 and remand the case back to the US Ct Appeals, 3rd to be adjudicated thereby granting Due Process to the Petitioners without a new Cause, thus Suspending Local Rule 4.1 and FRCP Rule 4.

Dated this 6th day of March 2001 BY:
Joseph R. Caterina, Frances H. Caterina, Emmett Caterina, Clara Caterina; In Pro Se

3/n No Orders exist dated July 19, 1999 & July 29, 1999 implying USDC MDPa Scranton authored US Ct Appeals,3rd Cir Opinion/Judgment 12/7/2000 ?

**see (A-22,25)herein

Respectfully submitted

Joseph R. Caterina, In Pro Se

Frances H. Caterina, In Pro Se

Emmett Caterina, In Pro Se

Clara Caterina, In Pro Se

c/o Joseph R. Caterina
Registered Civil Engineer
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(570) 489-8741 home
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(570) 348-5167 page

March 6th 2001

Note: Please be advised should the Court grant said Writ that we will make every effort to be represented by Counsel

Original Signatures

(A-o)

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THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos 99-3689 and 99-3690 (Consolidated)

Joseph R. Caterina, Frances H. Caterina, Emmett Caterina, Clara Caterina, Appellants

v

Unified Judicial System of the Commonwealth of PA & Related Parties, Lackawanna Co Redevelopment Authority, PA Gen. State Authority, Blakely Borough

On Appeal from the USDist Ct. MDPa
(D.C. Civ No 97 cv 00242)

SUR PETITION FOR PANEL REHEARING

Before: Nygaard, McKee & Stapleton, Ct Js

* The Petition for rehearing filed the Appellant in the above-entitled matter, having been submitted to the judges who participated in the decision of this court, & no judge who concurred in the decision having asked for rehearing, the Petition for Panel Rehearing is hereby DENIED.

It is so ordered.

By the Court
s/s
United States Ct. J

Date: Jan 08 2001
lmc/cc: Mr. JRC
Mrs FC
Mr. EC
Mrs CC
TBH

*see (A-2) herein (1)

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
Nos. 99-3689 and 99-3690 (Consolidated)

Joseph R. Caterina, Frances Caterina, Emmett Caterina, Clara Caterina,
Appellants/Petitioners

v

Unified Judicial System of the Com of PA, and Related Parties; Lackawanna Co Redevelopment Authority; PA General State Authority; Blakely Borough, et al
Appellees/Respondents

PETITION FOR A PANEL REHEARING
(By Panel Not Em Banc)

On Order Per Curiam United States Court of Appeals, For the Third Circuit dated (Filed December 7, 2000) and Opinion as Submitted Under Third Circuit LAR 34.1 (a) November 3, 2000.
Before: NYGAARD, MCKEE and STAPLETON, Circuit Judges.

On Appeal From the United States District Court For the Middle District of PA
(M.D. Pa. Civ. No. 97-cv-00242)
District Judge: Honorable Wm. W. Caldwell

PETITIONERS In Pro Se
c/o Joseph R. Caterina
202 Kenyon Drive
Peckville, PA 18452
(570) 489-8741

DATE: 17 December 2000

cover

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 99-3689 and 99-3690 (Consolidated)

Joseph R. Caterina, Frances Caterina, Emmett Caterina and Clara Caterina;

Petitioners,

v

Unified Judicial System of the Com of PA and Related Parties; Lackawanna County Redevelopment Authority; Pennsylvania General State Authority; and Blakely Borough and Related Parties;

Respondents.

PETITION FOR A PANEL REHEARING
(BY PANEL NOT EM BANC)

Come now the Petitioners, above named to Petition this Honorable Court for a Rehearing by Panel in the above entitled case under Rule 28 USC § 2072(b) of FRCP.

Petitioners move this honorable Court to take Judicial Notice to the fact that one can not move in two courts on the sacase at the same time! [1]

Therefore Petitioners were unable to comply with United States Dist Judge Wm W. Caldwell's Order dated June 24, 1997; (Dkt Enty 2, Apx pp 16a,17a) as filed June 24, 1997; & the Petitioners Petition this Ct to modify or abrogate FRCP Rule 4, for effective service & Local Rule 4.1 as to timeliness & perfection of service in order to protect Petitioners' Right to Appeal under 28 USC § 1291; enabling the protection of the rights & privileges of said Petitioners,

Under 28 USC § 2071(c)(1) as follows: "A rule of a district court prescribed under subsection (a) shall remain in effect, unless modified or abrogated by the judicial council of the relevant circuit" [2]

Federal Rule of Civil Procedure (FRCP) Rule 4 and Local Rule 4.1 abridged a Substantive Right under 28 USC § 2072(b) as follows:

"(b) such rules shall not abridge, enlarge, or modify any substantive right. All Laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." [3]

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[1]Judicial Notice that Petitioners inability to comply with Order due to the fact that Petitioners could not move in two Courts on the same case at the same time governed their compliance.

We believe that (FRCP) Rule No 4 & Local Rule 4.1 abridged Petitioners' Substantive right to appeal under 28 USC § 2072(b) for the following reasons:

1) Petitioners ask the Court to take Judicial Notice that 'Inability to Comply with a Court Order is a proper defense'.[4]

2) Petitioners had to await the Final Order of the Supreme Court of the United States before proceeding in their Pending Case in the District Court![5]

3) Petitioners ask the Court to further take Judicial Notice that Petitioners can not move on the same case in two Courts at the same time and thus were unable to comply with the District Court Order.

4) Petitioners had to exhaust their Statutory Remedy so-as to perfect their substantive rights and privileges before their case could go forth in the District Court herein being Appealed!

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[2]Federal Civil Judicial Procedure & Rules 2000 Edition by West Chp 131-Rules of Courts § 2071 (c) (1), p. 943

[3]Federal Civil Procedure & Rules 2000 Edition by West Chp 131 Rules of Courts § 2072 (b), p. 944

[4]Alred v Celanese Corp of America; 205 GA 371, 54 SE2d 240, 24 BNA LRRM 2167, 16 CCH LC ¶ 65155, Cert Den 338 US 937, 94 L Ed 578, 70 S Ct 346, 25 BNA LRRM 2204

5) Petitioners have now Exhausted their Statutory Remedy and can proceed with the case!

6) Petitioners are being Restrained from entry upon their Land which has been Seized without Probable Cause!

Compliance with the Court Order in Question would have compromised & Harmed prematurely the Petitioners' Cause of Action before Exhaustion of their Statutory Remedy!

Judge Caldwell's Order to Dismiss dated 22 July 1997, (Dkt Entry 4; Apx p. 124a) obstructed, abridged & abrogated the substantive rights & privileges of said Petitioners herein who were unable to comply with said Order of the District Court Local Rule 4.1 and (FRCP) Rule 4.

For the above stated reasons the Petitioners Pray that this Court will grant their Petition for a Panel Rehearing.

Respectfully submitted;

Joseph R. Caterina	In Pro Se
Frances Caterina	In Pro Se
Emmett Caterina	In Pro Se
Clara Caterina	In Pro Se

DATED 17 December 2000

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5 Order Jan 12, 1998; US Sup Ct No 97-102 Caterina et al v Blakely Boro. et al Petition Rehearing denied s/s W.K. Suter, Clerk to Atty Thomas M. Marsilio;(Dkt Enty 5, Apx p. 127a) (4)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
Nos. 99-3689 and 99-3690 (Consolidated)

Joseph R. Caterina; Frances Caterina;
Emmett Caterina; Clara Caterina,
Appellants

v

Unified Judicial System of the Commonwealth of Pennsylvania, and Realted Parties;
Lackawanna County Redevelopment Authority;
PA General State Authority; Blakely Borough

On Appeal From the US Dist Ct. MDPa
(M.D.Pa. Civ. No. 97-cv-00242)
District Judge: Honorable Wm W Caldwell

Submitted Under Third Circuit LAR 34.1(a)
November 3, 2000
Before: NYGAARD,MCKEE & STAPLETON, Cir Js

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

(1)

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see (A-22) No 99-3689 & (A-25) No 99-3690 ; herein Appendix

ORDERED AND ADJUDGED by this court that the judgments of the District Court entered July 19, 1999 and July 29, 1999 be and the same are hereby affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/s

Marcia M. Waldron

Clerk

DATED: December 7, 2000

Certified as a true copy and issued in lieu of a formal mandate on January 16, 2001

Teste: s/s

Marcia M. Waldron

Clerk, United States Court of Appeals for the Third Circuit

(2)

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see Appendix herein (A-22) No 99-3689 & (A-25) No 99-3690.

UNREPORTED-NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
Nos. 99-3689 and 99-3690 (Consolidated)

Joseph R. Caterina; Frances Caterina;
Emmett Caterina; Clara Caterina,
Appellants

v

Unified Judicial System of the Commonwealth of Pennsylvania, and Related Parties;
Lackawanna County Redevelopment Authority;
PA General State Authority; Blakely Borough

On Appeal From the US Dist Ct MDPa
(M.D. Pa. Civ No. 97-cv-00242)
District Judge: Honorable Wm W Caldwell

Submitted Under Third Circuit LAR 34.1(a)
November 3, 2000
Before: NYGAARD,MCKEE & STAPLETON, Cir Js

(Filed December 7, 2000)

OPINION

PER CURIAM

Pro se appellants Joseph Caterina, Frances Caterina,Emmett Caterina, and Clara Caterina, appeal the judgments of the Dist Ct striking their document entitled 'Confirmation' and denying their motion for reconsideration. For the reasons explained below, we will affirm.

The Caterinas filed a pro se complaint under 42 USC § 1983,claiming that several entities connected with the judicial system of the Com of PA violated their constitutional rights to due process & to equal protection under the law. The Caterina failed to serve the defendants within 120 days, as required by FRCP 4(m). The Dist Ct entered an order directing them to effect service and warning them that failure to do so would result in the dismissal of the action. When the Caterina again failed to properly serve the defendants, the Dist Ct dismissed the action for failure to comply with its prior order.

The Caterinas filed a document entitled 'Confirmation,' which was stricken. The Caterinas timely appealed from the order striking the 'Confirmation' and that appeal has been dkt at C.A. No. 99-3689. The Caterinas next filed a motion for reconsideration, which was denied. The Caterinas timely appealed from that order and that

that appeal has been dkt at C.A. No 99-3690. The appeals have been consolidated.[1]

(2)

The matter has been fully briefed & is now ripe for consideration.[2]

We have jurisdiction under 28 USC § 1291. The decisions striking the 'Confirmation'& denying the motion for reconsideration are reviewed for abuse of discretion. G. Paluk v Gooding Rubber Co,221F,3d 1003, 1015n9(7th Cir 2000); Hudson United Bank v LiTenda Mort Corp, 142 F3d 151, 159-60(3d Cir 1998).

As noted, the Dist Ct notified the Caterinas of their failure to properly serve the defendants & gave them an extra 30 days in which to do so. The Caterinas neither served the defendants nor provided an explanation as to the failure to do so. Accordingly, the Dist Ct properly dismissed the action for failure to comply with its prior order. The Caterinas' document entitled 'Confirmation' did not even purport to challenge the Dist Ct's order and as the Dist Ct correctly noted, therewere no proceedings before it at the time the 'Confirmation' was filed. Accordingly, the Dist Ct did not abuse its discretion in striking it.

In addition, the motion for reconsideration did not rely on either an intervening change in controlling law, the availa-

bility of new evidence not available previously, or the need to correct clear error of law or prevent manifest injustice. See North River Ins Co v Cigna Reinsurance Co, 52 F3d 1194, 1218(3d Cir 1995)(internal (3)
quotations ommitted). Therefore, the Dist Ct was within its discretion to deny the motion.

Accordingly, we will affirm the Dist Ct's orders striking the 'confirmation' and denying the motion to reconsider. In addition, we will deny the Caterinas' motions to file a supplemental brief, to file a supplemental appendix, & to incorporate Dist Ct dkt entry number 29 into the appendix. All of the documents sought to be filed are either already before the Court as part of the District Court record or unnecessary for the resolution of this appeal. Finally, we will deny the Caterina' request for oral argument because the panel has determined that oral argument is not needed. See L.A.R. 34.1(a). (4)

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[1]Subsequently, the Caterinas moved for reconsideration nunc pro tunc & the Dist Ct * denied their motion. The Caterinas' timely appeal from that order has been dkt at C.A. 99-3793 and will be resolved independently.

[2]All of the appellees have either notified the Court that they are not participating in the appeal or failed to file a brief; thus the appeal is proceeding on appellant's brief only. See Clerk's Order dated Aug 9, 2000.

*see (A-28) herein (A-12)

(Dkt Enty 3)

To: Judge William W. Caldwell

PLAINTIFFS REPLY ON 8 JULY 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs v UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH; Defendants	: Reply filed : Scranton : Jul 9 1997 :Civil Action :No. :3:Cv-97-242 : :Order filed :Harrisburg PA :Jun 24 1997 :Mary E. Dandrea :Clerk

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On February 18, 1997, plaintiffs filed a civil rights action against the Unified Judicial System of the Commonwealth of PA & related parties.[1] Since that date no return of service has been filed by plaintiffs, showing that they have

[1]The identities of some of the related parties are not fully stated in plaintiffs' pro se complaint.

served the defendants in the manner required by the Federal Rules of Civil Procedures (See Rule 4).

Rule 4(m) provides that if service of the summons and complaint is not made upon a defendant within 120 days from filing, the court shall dismiss the action as to that defendant.

Accordingly, plaintiffs are hereby notified that unless the summons and complaare properly served on said defendants on or before July 18, 1997, and a return of service filed by said date, this action will be dismissed, without prejudice, as to any defendant who is not so served.

William W. Caldwell s/s
United States Dist Judge

Date:June 24, 1997 (Dkt Entry 2)

Plaintiffs Reply 8 July 97 CIV ACTION NO. 3: CV-97-242

TO THE COURT:

The inclosed timely filed Writ of Certiorari by Attorney Thomas M Marsilio with the Supreme Court of the United States on 15 April 1997 on an important issue of Federal Law of first impression must be decided before proceeding.

This Court, it is suggested, should treat this as an automatic 'supersedeas' concering the above action and Order.

Respectfully submitted,
Joseph R. Caterina s/s

Date 8 July97Plaintiffs et al
Incls: US Sup Ct Writ of Cert
Caterina et al v Blakely et al
Filed 15 Apr 1997 Oct Term 96 19a
(2)

(Dkt Entry 4)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs	: CIVIL ACTION : No.
v	: 3:CV-97-242
UNIFIED JUDICIAL SUSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH; Defendants	: Filed : Harrisburg PA : Jul 22 1997 : Mary E Dandres : by s/s jl

O R D E R

AND NOW, this 22nd day of July, 1997, pursuant to an order entered in this case * on June 24, 1997, this action is dismissed without prejudice, and the clerk of court shall close the file.[1]

s/s
William W. Caldwell
United States Dist J

[1]Plaintiffs have notified us that they have filed a petition for writ of certiorari in the Supreme Court of the United States, from an action of the Supreme Court of Pennsylvania. Pendency of related matters in other courts provides no basis for failure to comply with the requirements for service of the complaint in this action. In this regard, the proofs of service, filed July 17, 1997, dealing with their petition in the U.S. Supreme Court, cannot be considered service in this case.

*see (A-13,14)herein(1)

(Dkt Entry 5)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs v UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH Defendants	CIVIL ACTION No. 3: CV-97-242 Filed Scranton Jul 17 1998 Per m Deputy Clerk

MOTION FOR CLARIFICATION

Pursuant to Order Dated 22 July 1997, * herein attached; Plaintiffs wish Clarification as to time limit on proceeding with issues not yet addressed by the Court!

Inclosed and attached various documents confirming the Exhaustion of the Remedy of the Right to Appeal that opens the door to the Common Law Right to Remedy and the Primary issue of the Right to Trial by Jury having been denied to date. There was no Remedy in the Procedures before the Couts, only Recourse!

Respectfully submitted
Joseph R. Caterina s/s
Plaintiffs
Joseph R. Caterina etal

DATE 17 July 98
US Sup Ct No. 97-102 (1)
*see (A-15) herein

MOTION FOR CLARIFICATION

Attachments with Motion:

1) Order dismissed Jul 22, 1997 (A-15) herein

2) Order petition rehearing denied US Sup Ct Jan 12, 1998, No 97-102 (A-18) herein

3) US Sup Ct Notification List (Dkt Entry 5) 128a

4) US Sup Ct No. 97-102 Petition Rehearing by Attorney Thomas M. Marsilio cover only. 1/n

5) Federal Civil Judicial Procedure and Rules Cover 1997 Edition and: Rule 38. Jury Trial Right VI Trials

Rule 38 (a)
"(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by statute of the United States shall be preserved to the parties inviolate."

pages 180 and 181

1/n (Dkt Entry 6) was also filed on 7/17/1998; The Booklet US Sup Ct No. 97-102 Petition Rehearing-Order on Petition For Writ of Certiorari 134a

* All of the above attachments were filed on Jul 17 1998 with the Motion For Clarification in Civil Action No. 3: CV-97-242 (Dkt Entry 5) 125a

(Dkt Enty 5).

Attachment with Motion For Clarification

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

January 12, 1998

Mr. Thomas Michael Marsilio
Kisailus Law Offices
15 Darling Street
Wilkes-Barre, PA 18702-2510

Re: Joseph R. Caterina, Frances H. Caterina, Emmett Caterina, and Clara Caterina v. Blakely Borough, et al.
No. 97-102

Dear Mr. Marsilio:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,
s/s

William K. Suter,
Clerk

(Dkt Enty 7)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs v UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH Defendants	CIVIL ACTION No. 3: CV-97-242 Filed Harrisburg, PA Jul 29 1998 Mary E Dandrea Clerk Per s/s Deputy Clerk

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On July 22, 1997, we dismissed this matter without prejudice, based on Plaintiffs' failure to effect timely service of the complaint pursuant to FRCP Rule 4. Now before us is a document filed by Plaintiffs titled "Motion for Clarification," * which does not indicate the relied Plaintiffs are seeking. The Order of July 22, 1997, speaks for itself and does not require 'clarification.'

Accordingly, this 29th day of July, 1998, it is ordered that Plaintiffs' "Motion for Clarification," filed July 17, 1998 (Doc. No. 5), is denied. s/s
William W. Caldwell
United States Dist Judge

*see (A-16) herein (1)

(Dkt Enty 8)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA	:
FRANCES H. CATERINA	:
EMMETT CATERINA	:CIVIL ACTION
CLARA CATERINA	:No.
Plaintiffs,	:3:CV-97-242
v	: Filed
UNIFIED JUDICIAL SYSTEM OF	: Scranton
THE COMMONWEALTH OF PA and	: Jul 13 1999
RELATED PARTIES; LACKAWAN-	: s/s
NA COUNTY REDEVELOPMENT A-	:Deputy Clerk
UTHORITY;(PA GENERAL STATE	:
AUTHORITY); BLAKELY BOROUGH	:
Defendants.	:

CONFIRMATION

1)Pursuant to Order 22 July 1997,'Dismissed Without Prejudice' & subsequent ORDER * 29 July 1998,'Motion for Clarification-denied; the Clerk & I are unable, with specificty to locate a Rule defining the time limit within which to proceed without being in default.

2)*Via ORDER 12 Jan 1998 the US Sup Ct perfected our Right to Remedy under Common Law, as we exhausted our statutory remedy, in the absence of any is construed to be the right to appeal!

3)The Trial Court,since 23 Dec 1997,has been unable to deny or rebut our'filings moot'declairing all their actions nugatory at face;including restraining ORDER without cause, probable or otherwise.

4)Because of the lack of response by the Trial Court to date, it is not practicable to proceed with this matter at this immediate time.

5)It would appear that the Trial Court is unable to come up with a valid legal or judicial reason to support any or all of their actions, including jurisdiction.

* see (A-19) herein (cont)

(confirmation cont.)

6)We have been denied Trial by Jury, Right to Remedy, Due Process and I have been Restrained without Probable Cause by a Trial Court that denied Service and lacks Jurisdiction! Said Trial Court has been non-responsive to date, (since 23 Dec 1997)!

7)We request confirmation that we can proceed with this matter and are not yet in default with regard to ORDER 22 July 1997.

Respectfully Submitted
s/s
Joseph R. Caterina, Plaintiffs et al
Emmett Caterina s/s

DATED: 17 July 1999
* US SUP Ct No. 97-102

cc: Atty Thomas Marsilio/
Kisailus Law Offices
15 Darling Street
Wilkes-Barre, PA 18702-2510 1/n

1/n documents filed with confirmation as follows:

1) Order 22 July 1997 (Dkt Entry 4)
see (A-15) herein. 199a
2) Order 29 July 1998 (Dkt Entry 7)
see (A-19) herein. 200a
3) Motion For Clarification 17 Jul1998
(Dkt Entry 5)
see (A-16) herein. 201a
4) Order US Sup Ct 12 Jan 1998 #97-102
Rehearing Denied (Dkt Entry 5)
see (A-18) herein. 202a
5) US Sup Ct No. 97-102 cover Petition
for Rehearing (Dkt Entry 5 and 6)
see (A-17) herein. 203a
6) FRCP Rule 38(a), 1997 FRCP
(Dkt Entry 5)
see (A-17) herein. 204a,205a,206a

(Dkt Enty 9)

U.S. Ct Appeals, 3rd Cir (No 99-3689)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs	CIVIL ACTION No. 3: CV-97-242
v	
UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH Defendants	Filed Harrisburg, PA Jul 16, 1999 Mary E Dandrea Per md Deputy Clerk

O R D E R

AND NOW, this 16 day of July, 1999, a document entitled "Confirmation" filed by the plaintiffs on July 13, 1999, is stricken since this case was dismissed on July 22, 1997, and there are no proceedings in this court.

s/s
William W. Caldwell
United States District Judge

(1)

see (A-20) herein 207a

(A-22)

(Dkt Entry 10)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs	: CIVIL ACTION : No.
v	: 3:CV-97-242
UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH Defendants	: Filed : Scranton : Jul 26,1999 : Per s/s : Deputy Clerk

REQUEST FOR RECONSIDERATION ORDER 16 Jul 99

The Plaintiffs wish the Court to consider that the Rules of Court are promulgated to promote the effective administration of Justice and not as an instrument to deny or obstruct justice at the convenience of the Clerks on behalf of the Court and its' Judges!

In view and in light of the document entitled 'Confirmation'; it is not too difficult to realize that Defendants through the Agents of the so-called Unified Judicial System of Pennsylvania, in this case the Trial Court, are abusing process to deny and obstruct justice!

The Court herein, by (striking) the document, are in effect validating the wrongful acts of the Defendants and aiding and abeting the Defendants acts.

We wish the Court to let the document stand in the record

(1)

as evidence of said abuse of process wherein one of the Plaintiffs has been unlawfully restrained and the PA General State Authority is in possession of stolen property wherein said property must be returned to its' rightful owners, the Plaintiffs herein, because of the criminality of their acts.

The Rules of Court are requested to be suspended so as not to Deny Justice to the Plaintiffs who have no control over the Trial Court and their non-responsive policcy!

The Position of the Plaintiffs is that all of the Acts of the Trial Court are moot and nugatory at face including the Restraining Order on Plaintiff Joseph R. Caterina and John Doe (and Jane Doe) as it is without probable cause and lacks jurisdiction and that justice delayed is justice denied!

For the foregoing reasons the Plaintiffs request the Court to Reconsider their ORDER dated 16 July 1999 and to let the document Confirmation stay in the record because Federal Rule of Civil Procedure No. 4 may not apply because of the wrongful abuse of process of the Defendants' Trial Court under the circumstances of this case! 1/n

Respectfully submitted,

s/s

Joseph R. Caterina, Plaintiffs et al

s/s

cc: Emmett Caterina DATED 26 July 1999
Atty Thomas Marsilio/Kisailus Law Offices
15 Darling St., Wilkes-Barre, Pa18702-2510

1/n Documents filed with Request for Reconsideration Order 16th, July 1999 as follows: 1)Confirmation filed Jul 13 1999 (Dkt 8) see (A-20) herein 198a; 2) Order 16 Jul 99 (Dkt 9) see (A-22) herein207a;(210a,211a)

(Dkt Entry 11)
U.S. Ct Appeals, 3rd Cir (No 99-3690)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs	:	CIVIL ACTION No. 3:CV-97-242
v		
UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH	:	Filed Harrisburg,PA Jul 28 1999 Mary E Dandrea Per s/s Deputy Clerk

O R D E R

AND NOW, this 28th day of July, 1999, the plaintiffs' motion for reconsideration is dismissed. The court also informs the plaintiffs that although the document entitled "Confirmation" is stricken, it does remain on the record.

s/s
William W. Caldwell
United States District Judge

(1)
see (A-23) herein

US Ct Ap,3rd No 99-3689 (Dkt Entry 13)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs	: CIVIL ACTION : No. 3:CV-97-242
v	
UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH AND RELATED PARTIES Defendants	: Filed Scranton :Aug 13 1999 Per s/s Deputy Clerk

NOTICE OF APPEAL #1

The Court is hereby put on notice that an appeal is taken regarding ORDER 16th July Re: 'Confirmation', Stricken!

Plaintiff is being restrained by Trial Court without cause and Defendants Agent, Trial Court, has been non-responsive and is attempting to obstruct justice via abuse of process!

Federal Rules of Civil Procedure time Bar Plaintiffs, but Trial Court, Agent of Defendants has no Time Bar!

Rule of Court should be suspended in-order not to obstruct justice.

Respectfully submitted!
Joseph R. Caterina s/s
Plaintiffs et al, Emmett Caterina
Clara Caterina, Fran Caterina s/s

Date: 13 Aug 99
cc: Order 16 July 99 see (A-22) herein

US Ct Ap,3rd No. 99-3690 (Dkt Entry 14).

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs	:CIVIL ACTION No. 3:CV-97-242
v	Filed
UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH AND RELATED PARTIES Defendants	Scranton Aug 13 1999 Per s/s Deputy Clerk

NOTICE OF APPEAL #2

The Court is hereby put on notice that an appeal is taken regarding ORDER 28 July 1999 Re: "Motion for Reconsideration", Dismissed!

Trial Court established a 'Moot' tangent and is restraining Plaintiff 'without probable cause' and is abusing process to aid and abet the Criminal Acts of the Defendants and to obstruct the justice due Plaintiffs in a Conspiratorial manner to deny Plaintiffs Due Process! (Cite: Moot Action No. 60046-1996 Common Pleas. Lacka. Co., Equity). Ther is no valid legal or judicial reason to Restrain the Defendant Joseph R. Caterina and or John Doe (and Jane Doe) other than to obstruct justice!

Plaintiffs have asserted various statutory rights and the Unified Judicial System of Pennsylvania has chosen (to) ignor the equal protection of these various rights under the Law! Respectfully submitted
Joseph R. Caterina, Plaintiffs et al s/s
Emmett Caterina, Clara Caterina, Frances
Dated: 13 Aug 1999 Caterina
cc: Order 28 July 99 see (A-25) herein

(Dkt Entry 12)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs; v UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH; AND RELATED PARTIES Defendants.	CIVIL ACTION No. 3:CV-97-242 Filed Scranton Aug 16 1999 per s/s Deputy Clerk

NUNC PRO TUNC

RECONSIDERATION ORDER 22 July 1997 and
ORDER 29 JULY 1998

1) Plaintiffs request the Court to Reconsider ORDER 22 July 1997, dismissed without prejudice, because the Plaintiffs filed Writ of Certiorari on 15 April 1997 with the Sup Ct of the United States and no acknowledgement of said filings was received until 31 July 1997; wherein said Dist Court Order time barred the Plaintiffs wherein the Plaintiffs had no control over the Supreme Court of the United States & therefore Federal Rules of Civil Procedure, Rule 4, should be suspended under the circumstances inorder to protect the 'Due Process Rights' of the Plaintiffs in this case their 'Right to Appeal', which was their right to Remedy under the Law. The Court's Ruling acted as an Obstruction to 'Due Process'. The Court should have suspended the Rule 4 until such time that the Supreme Court of the United States acknowledged the Plaintiffs Filings. The Court is requested to Suspend FRCP No 4 on reconsideration!

2) Plaintiffs request the Court to Reconsider ORDER 29 JULY 1998,'Motion for Clarification' denied,because the Plaintiffs were Denied Trial by Jury by the Defendants and inorder to secure; Under the VII Amendment of the Constitution of the United States; said right; they must First Exhaust their Remedy under the Law and in the absence thereof their Right to Appeal is construed to be their Statutory Remedy that was exhausted, thus! validating the assertion of their Common Law Remedy, viz, 'Right to Trial by Jury'& the Court should not have Denied their 'Motion for Clarification' in as much as the Case is unique and of First Impression and requires Clarification as to procedural processes available to the 'Pro Se'Plaintiffs! The Court is requested upon Reconsideration to grant the 'Motion for Clarification' and to Suspend the Rules that Barred their requist!

3) The Court has obstructed the Plaintiffs Right to Trial By Jury by Dismissing the Action that could not proceed (emphasis added) until the Statutory Remedy was exhausted and the Court should Not have denied the Plaintiffs 'Motion for Clarification'; because of the uniqueness of the assertion of Right to Trial By Jury of the Plaintiffs; said Motion should have been granted under the circumstances of thier Cause of Action!

Respectfully Submitted,
Joseph R. Caterina, Plaintiffs et al s/s
Emmett Caterina, Frances Caterina, Clara Caterina s/s

DATED: 16 August 1999

Incls: Order 22 July 1997 219a
Order 29 July 1998 220a
see (A-15) herein (Dkt Entry 4) 124a
see (A-19) herein (Dkt Entry 7) 197a
(2) 218a
see (A-12) opinion US Ct Ap,3rd herein;
Judgment/Opinion Dec 7, 2000(99-3793)

(Dkt Entry 18)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs, v UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH; Defendants	CIVIL ACTION No. 3:CV-97-242 Filed Harrisburg,PA Aug 27 1999 Mary E Dandrea Per s/s Deputy Clerk

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

We are considering the plaintiffs' nunc pro tunc motion for reconsideration of our order of July 22, 1997, which dismissed the case without prejudice for failure to effect timely service of process, and our order of July 29, 1998, which denied a motion for clarification.

The basis of the reconsideration motion is that we should not have dismissed the case because at the time we did so the plaintiffs had a petition for writ of certiorari pending in the United States Supreme Court that influenced the plaintiffs in not complying with the time requirements of Federal Rule of Civil Procedure 4 for effecting service.

(1)

223a

see (A-12) herein, opinion US Ct Ap, 3rd; Judgment/Opinion Dec 7, 2000(99-3689,3690) see (A-28,29) herein and (A-12),(99-3793)

(A-30)

We reject this contention. The pendency of such a petition has no bearing on timely service of process of a lawsuit that the plaintiffs elected to initiate while they pursed that petition.

However, we advise the plaintiffs that their previous lawsuit was dismissed without prejudice. Therefore, if they wish to pursue their claim, they may file another case. Service of process should comply with federal Rule 4 and Local Rule 4.1 as to timeliness and perfection of service on the defendants.

AND NOW, this 27th day of August, 1999, it is ordered that the plaintiffs' nunc pro tunc motion for reconsideration (doc. 12) is denied.

s/s
William W. Caldwell
United States District Judge

US Ct Ap,3rd Cir#99-3793 (Dkt Entry 23)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs	:CIVIL ACTION No. 3:CV-97-242
v	Filed
UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY;(BLAKELY BOROUGH); Defendants	Scranton Sep 13 1999 Per rmt Deputy Clerk

NOTICE OF APPEAL #3

The Court is hereby put on notice that an appeal is taken regarding ORDER 27 August 1999,Re: 'Nunc Pro Tunc Motion for Reconsideration'; (doc.12) Denied!

Review by the Supreme Court of the United States was crucial to the perfection of our asserted Rights to Common Law Remedy; viz. 'Right to Trial By Jury', as the Statutory Remedy; the right to appeal; was exhausted; thus! validating our Right to Trial by Jury under the VII Amendment of the Constitution of the United States.

The granting of Certiorari was not crucial, BUT! the exhausting of the Statutory Remedy under the LAW; in this case the rito appeal because of the absence of any remedy; was crucial! (emphasis added)

F.R.C.P. No. 4 obstructed our rights secured under the Constitution of the United States by abrogating them prem-
maturely! (1) 228a
see (A-30) herein (Dkt Enty 18) 223a
see (A-28) herein (Dkt Entry 12) 217a

Cite: "Where rights secured by the Constitution are involved, there can be no rule making or legislation which abrogate them." (emphasis added)
Ernesto A. Miranda v State of Arizona, 384 US 433; 86 Sup Ct Rep 1602, cite n73, 1608

Judge William W. Caldwell and his Law Clerks are wrong and must be reversed in the interest of justice as they prematurely prejudged the merits of the Case and obstructed our Constitutional 'Right to Trial By Jury' and our 'Statutory Right to Remedy under the Law'.

The pendency of the Certiorari Petition and Rehearing had very great bearing as its' exhaustion was crucial! thus meriting the delay of service until perfected!

The Court was given prompt NOTICE of the filings as copies were docketed of the Writ of Certiorari and Petition Rehearing in this case. (see the docket entries in the record)

The advice that the Court gave the Plaintiffs was erroneous under the circumstances of the case scenario and abrogated both the Constitutional and Statutory Remedy Law Rights of the Plaintiffs as initated thru the use of F.R.C.P. Rule No. 4! Said Rule should have been suspended to permit the Remedy to be asserted!

Respectfully submitted

s/s

Joseph R. Caterina, Plaintiffs et al
Frances Caterina, Emmett Caterina, Clara Caterina, s/s
DATE: 13 September 1999

(2) 229a

Incls: Order 27 Aug 1999 see (A-30)herein
see (A-28,29) herein(Dkt Entry 12) 217a
see (A-15) herein and (A-16) herein

US Ct Ap, 3rd Appeal No. 99-3793, see(A-12) herein

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos 99-3689 & 99-3690

Caterina, et al.

v

Unified Judicial, et al

Joseph R. Caterina, et al., Appellants

(Middle District of Pennsylvania Civil No. 97-cv-00242)

O R D E R

It is hereby O R D E R E D that the appeals at NOS. 99-3689 and 99-3690 are consolidated for purposes of briefing and disposition on the merits.

For the Court.

s/s

P. DOUGLAS SISK, Clerk

Date: 9/9/1999

cc: Mr. Joseph R. Caterina
Ms. Frances Caterina
Mr. Emmett Caterina
Ms. Clara Caterina
Office of the District Attorney of Lackawanna County
Attorney General PA

see (A-11) herein [1] OPINION 7 Dec 2000 US Ct Ap, 3rd Cir

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 99-3689 and 99-3690 (Consolidated)

Joseph R. Caterina, Frances Caterina,
Emmett Caterina, Clara Caterina,
Plaintiffs/Appellants/Petitioners

v

Unified Judicial System of the Commonwealth
of Pennsylvania and Related Parties;
Lackawanna County Redevelopment Authority;
Pennsylvania General State Authority;
Blakely Borough; et al,
Defendants/Appellees/Respondents

Joseph R. Caterina, et al, Appellants

vs

Unified Judicial, et al.

Appeal (Middle District of Pennsylvania
Civil No. 97-cv-00242)

INFORMAL BRIEF OF APPELLANTS

Orders Entered: 16 July 99, 28 July 99

DATE: 18 October 99; 202 Kenyon Dr., Peckville, PA 18452; (570) 489-8741

PART I
INTERIM INFORMAL BRIEF

Argument No. 1

The Plaintiffs Exhausted their Statutory Remedy on 12 January 1998(Exhibit'A',Appx 127a),(Exhibit'B',Appxs 183a,184a)cite: "Review by the Supreme Ct of the U.S. was crucial to the perfection of our asserted Rights to Common Law Remedy; viz.'Right to Trial by Jury', as the Statutory Remedy;

the right to appeal; was exhausted; thus validating our Right to Trial by Jury under the VII Amendment of the Constitution of the United States"(Notice of Appeal, Appx 228a)

Argument No. 2

MAXIM OF LAW: Silence is consent! cite: All parties were silent and all Courts w-were silent.

Argument No. 3

Case is perfected, all parties defaulted!

(1)

Argument No. 4

Cite:"Where rights secured by the Constitution are involved, there can be no rule making or legislation which abrogate them" (emphasis added)
Ernesto A. Miranda v State of Arizona, 384 US 433; 86 Sup Ct Rpt 1602, n73 @ 1608.

The Order of the Judge to dismiss obstructed our Right to Trial by Jury and our Statutory Right to Remedy under Law. (Notice of Appeal, appx 229a)

(2)

Argument No. 7

In the complaint (doc 1) appx 9a Conclusion:"The reason the government has no remedy in law is simply that they lost the case and the courts protected their loss by denying us our constitutional rights to 'due process of law' and VII Amendment protections that bar any new cases in equity".

The Court used FRCP Rule 4 to obstruct our rights to 'Trial by Jury' under the Constitution of the United States by abrothem prematurely. They additionally abrogated our Statutory Law Rights to Remedy. cite: Orders: 7/28/99 apx 212a & 7/16/99 apx 207a intertwined with Order 8/27/99apx 223 also under appeal No 99-3793 3rd Ct CA.

(3)

Argument No. 8

The Judge suspended the right instead of the Rule inorder to abrogate the rights of the Appellants and with the sole intention to obstruct justice.(see apx 223a & 224a)

The Trial Court in their Moot Tangent Action fails to respond, which is an abuse of process, for the sole purpose to obstruct justice.(see apx 213a,214a,215a)

The purpose of the restraining order on Appellant Joseph R. Caterina & John & Jane Doe is for no other purpose than to obstruct justice.(see apx 215a,216a,213a)

The Right to Remedy under the Law has been asserted & the actions to obstruct said rights must be vacated forthwith as:" Where rights secured by the Constitution are involved, there can be no rule making or legislation which abrogate them".Ernesto A. Miranda v State of Arizona, 384 US 433; 86 Sup Ct Rpt 1602,cite n73 at 1608.

Request of the Court

To vacate the Orders of 28 July 1999; 16 July 1999 and 27 August 1999, and or to cite because the case is 'Res Judicata' that the Court lacks jurisdiction and the doctrine of 'collateral estoppel'bars all others from new cases or appearances concerning these issues.

Respectfully submitted:
Joseph R. Caterina, Frances Caterina, Emmett Caterina, Clara Caterina, s/s

DATE: 14 October 1999; Note: Interim Informal Brief pending full brief timely

END PART I, GO TO PART II FOLLOWS:

(4)

PART II

III STATEMENT OF THE FACTS (C) as follows:

The Judge suspended the Right instead of the Rule. He up-held the Rule & abrogated the perfected right to Trial by Jury of the Appellants.(see Argument 4,page 2 herein)

The Order of the Judg to Dismiss on July 22, 1997; (Dkt Enty 7, 197a) while these issues were pending before the Sup Ct of the United States was an obstruction of justice because the Appellants had to exhaust their Statutory Remedy, which in this case was the right to appeal; before coming to his Court to pursue their Right to Trial by Jury under the VII Amendment of the Constitution of the United States

"Where rights secured by the Constitution are involved, ther can be no rule making or legislation which abrogate them." (emphasis added)
Ernesto A. Miranda v State of Arizona, 348 US 433, 86 Sup Ct Rp 1602,n73,1608.

By doing so he has obstructed other rights, such as these two appeals wherein the Appellant is being restrained without probable cause and said Trial Court is abusing process by not having responded to the appellants 'Listing Moot'since 23 Dec. 1997, another obstruction of Justice.

The Appellants filed in the Sup Ct of the United States on 15 April 1997;(Dkt Enty 3, 48a) and said Court failed to acknowledge receipt of filing until July 31, 1997; (Dkt Enty 5, 146a); however the Judge dismissed the case on July 22, 1997 Order dismissed without prejudice;(Dkt Enty 4, 124a) 9 days before Clerk Loretta S. Ruffin responded to Case No 97-102. Letter July 31, 1997;(Dkt Enty 5, 146a).

(D) The granting of Certiorari was not crucial, But! the exhausting of the Statutory Remedy under Law; in the case the right to appeal because of the adsence of any remedy thereof; was crucial!

It mattered not if the U.S. Sup Ct granted Cert; however! what really mattered was the exhausting of the statutory remedy inorder to perfect the Statutory Right to Remedy under the Law; which in this case, because of lack of remedy, was the right to Appeal! (see Notice of Appeal 13 Sept 1999; 228a)

Federal Rules of Civil Procedure, Rule 4; the rule the Judge hid behind; obstructed our rights secured under the Constitution of the United States by abrogating them contrary to Ernesto A Miranda v State of Arizona,(348 US 433; 86 Sup Ct Rpt 1602, n73 p 1608).

"Where rights secured by the Constitution are involved, their can be no rule making or legislation which abrogate them."(enphasis added)

The Judge hid behind FRCP No 4 inorder to abrogate our rights to Trial by Jury under the VII Amendment with the sole purpose to obstruct justice. TheTrial Court in their 'Moot Tangent Action', fails to respond; which is an abuse of process; for the sole purpose to obstruct justice (213a,214a,215a). The purpose of the restraining Order on Appellant Joseph R. Caterina and John and Jane Doe is for no other purpose than to obstruct justice.(see 215a,216a,213a).

The Right to Remedy under the Law has been asserted. The Statutory Remedy, the right to appeal, has been exhausted. The

Right to Trial by Jury under the VII Amendment of the Constitution has been perfected; But! the Judge secured the Rule and Suspended the Right?

The Rule has better protection without rights than the Citizen has with them which is contrary to Miranda v Arizona; (348 US 433; 86 Sup Ct Rpt 1602, n73 p 1608). Note: See Argument No 8 p 4 herein!
(13)

(H) MAXIM OF LAW: He who remains silent consents. See Argument No 2, p 1 herein.

All parties remained silent all through the exhaustion of the Statutory Remedy including the Courts on all levels! (see Writ Certiorari Joseph Caterina 14 Apr1997; (Dkt Enty 3; 48a & Dkt Enty 6; 148a) as the theme through out is silence of both the parties and the Courts. See Argument No 3 on p 1 herein!
(15)

V. THE DISTRICT COURT INCORRECTLY DECIDED TO DISMISS

The District Court failed to understand that the Appellants were making every effort to perfect their Right to Trial by Jury under the Seventh Amendment and that the Pendency of the Certiorari Petition and Petition Rehearing had very great bearing as its' exhaustion was crucial to the perfection of their asserted Rights to Common Law Remedy; viz. 'Right to Trial By Jury', as the Statutory Remedy; the right to appeal needed to be exhausted; inorder to validate their Right to Trial by Jury under the VII Amendment of the Constitution of the United States.
(16)

The Judge was asked to suspend the Rule & Permit the Remedy, but the Judge & his Law Clerks refused & as a results these 2 appeals can not be decided until such time
(17)

that this Court determines did the Judge error by suspending the Right instead of the Rule of Court or in the alternative should not the Rule been abrogated inorder to permit the Right in accordance with the case Miranda v Arizona, 383 US 433;86 Sup Ct Rpt 1602, cite n73 at 1608.

(17)

VII THESE APPEALS CAN NOT BE DECIDED UNTIL IT IS DETERMINED IF IN FACT THE COURT HAS JURISDICTION AND IF THE JUDGE ACTED WRONGFULLY IN DISMISSING THE CASE AND ABROGATED THE RIGHTS OF THE APPELLANTS.

The Appeal herein Dkt No 99-3689 & No 99-3690 should not be decided until Appeal Dkt No 99-3793, see Notice of Appeal Order 27 Aug 1999; (Dkt Enty 23, 228a) & Notice from the US Ct Apls, 3rd Cir No 99-3793(Dkt Enty 24?;238a); is decided as the revelency to these issues is dependent upon whether or not the original cause of action should have been dismissed in the first place and if it in fact said dismissal abrogated the rights of the Appellants herein in effect obstructed justice!

(18)

VIII THE COURT OF APPEALS IS REQUESTED TO:

(b) Determine if the Judge should have suspended FRCP Rule No 4 so as not to abrogate the Right to Trial by Jury of the Appellants under the VII Amendment of the Constitution of the United States and their Statutory Right to Remedy under the Law.

(c) Compel the Trial Court in Equity to vacate the Restraining Order on Joseph R. Caterina, John Doe & Jane Doe, as said Court lacks jurisdiction & has restrained the above without probable cause & compel said Court to respond to the Appellants listing Moot that said case is nugatory!

. . . . . (19) Date 18 Oct 99 s/s

US Ct Apl,3rd Cir 21 Feb 2001
Marcia M. Waldron, Clerk
21400 United States Courthouse
601 Market Street
Philadelphia, Pa. 19106-1790
(267) 299-4922

Re: Captions on all Orders etc.*
Nos 99-3689 & 99-3690 (Consold.)
Joseph R. Caterina et al v
Unified Judicial System et al

Dear Clerk Marcia M. Waldron,

I wish your office to correct all the erroneous Captions on your offical documents listed herein above concerning Appeals Nos 99-3689,99-3690 . . & 99-3793 pending; . . with same caption as follows:

JOSEPH R. CATERINA, FRANCES H. CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs /Appellants

v

UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PENNSYLVANIA AND RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PENNSYLVANIA GENERAL STATE AUTHORITY; BLAKELY BOROUGH, et al; Defendants/Appellees

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Your caption created a fifth defendant; Lackawanna County erroneously! Please remove the semicolon after the word COUNTY; inorder to correct ALL CAPTIONS as Lackawanna County is Not a Party to this Action. There are only four Defendants/Appellees as above listed. Thank you; I'll await the Corrected Documents!

Sincerely

Joseph R. Caterina et al; 202 Kenyon Dr
Peckville, PA 18452; (570) 489-8741 s/s

Incls: copy of Orders/ Opinions, Judgments etc.

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* Re: Captions on All Orders, Certified Orders, Judgments, Opinions and Sur Petition for Panel Rehearing in ERROR

(1)

SUPREME COURT OF THE UNITED STATED
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

William K. Suter
Clerk of the Court

Area Code 202
479-3011

February 13, 2001

Mr. Joseph R. Caterina
202 Kenyon Drive
Peckville, PA 18452

Re: Joseph R. Caterina, Frances Caterina, Emmett Caterina and Clara Caterina v Unified Judicial System of Pa, et al.
Application No. 00A706

Dear Mr. Caterina:

The Application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Souter, who on February 13, 2001, extended the time to an including May 4, 2001.

This letter has been sent to those designated on the attached notification list.

Sincerely,
William K. Suter, Clerk
By s/s
Melissa A. Blalock
Assistant Clerk

Attached Notification List
Mr. Joseph R. Caterina 202 Kenyon Dr.
Peckville, PA. 18452

Mr. Mike Fisher 15th Fl, Strawberry Square
Harrisburg, Pa. 17120

Clerk United States Court of Appeals, 3rd
601 Market St, Rm 21400 Philadelphia, PA
19106 (1&2)

(Dkt Enty 1)

IN THE
SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: CONDEMNATION OF LAND OF DAVLISA ENTERPRISES, INC., JOSEPH & FRANCES CATERINA; and EMMETT & CLARA CATERINA SITUATE IN THE BOROUGH OF BLAKELY, FOR AN EASEMENT FOR A FLOOD CONTROL PROJECT Petition of: Joseph & Frances Caterina; and Emmett & Clara Caterina:	No. 181 Middle District Allocatur Docket 1996 Petition for Reconsideration for the Petition of Allowance of Appeal from the Commonwealth Court

ORDER

PERCURIAM:

AND NOW, this 14 day of January, 1997, the Petition for Reconsideration for Allowance of Appeal is hereby DENIED.

TRUE & CORRECT COPY
Attest: Jan 15, 1997 seal
s/s
Joan L. Stehulak, Esquire
Deputy Prothonotary

EXHIBIT 'D'

(see complaint) (9) 11a